

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2014 JUL 18 PM 4:28

DEPUTY CLERK LW

JAZZICA HOOD and SYTOBIA HOOD, Plaintiffs
V.
O'REILLY AUTOMOTIVE STORES, INC. D/B/A O'REILLY AUTO PARTS, Defendant

CIVIL ACTION NO.

5-14CV0127-C

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Jazzica Hood and Sytobia Hood, Plaintiffs, complaining of O'Reilly Automotive Stores, Inc. d/b/a O'Reilly Auto Parts, Defendant, and for cause of action would respectfully show the Court as follows:

1. Plaintiffs are citizens of the United States and residents of the State of Texas.
2. Defendant, O'Reilly Auto Parts, is a business operating throughout the nation and which may be served with process by service upon its registered agent for service, C.T. Corporation System, at 1999 Bryan Street, Ste. 900, Dallas, Texas 75201.
3. Plaintiffs bring this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e et seq. (hereinafter referred to as "CRA") and the Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq. (hereinafter referred to as "FMLA").
4. This Court has jurisdiction of this action pursuant to 42 U.S.C. §2000e-5, 29 U.S.C. §2617 and 28 U.S.C. §1331.

5. Venue is proper in the Northern District of Texas under 28 U.S.C. §1331(b).
6. Plaintiffs have satisfied all conditions precedent to initiating this court action.
7. Plaintiffs are former employees of Defendant. Plaintiffs were, at all times relevant to this cause of action, an eligible employee under the CRA and the FMLA.
8. Defendant is an employer under the CRA and the FMLA.
9. Plaintiff Jazzica Hood was employed by Defendant from February 21, 2011 until she was fired on August 23, 2013. Said Plaintiff was employed by Defendant as an order filler and earned \$13.00 per hour plus health and other benefits working full time. Plaintiff Sytobia Hood was employed by Defendant from August 23, 2010 until she was fired at the end of February 2014. Said Plaintiff was employed by Defendant as a material handler/replenisher and earned approximately \$12.50 per hour plus health and other benefits working full time.
10. The Defendant has violated the CRA and FMLA as to both Plaintiffs by discriminating against Plaintiffs on the basis of their race (African-American) and their pregnancies; and by interfering with, discriminating against, and denying Plaintiffs the opportunity to exercise their rights under the FMLA. Additionally, Defendant violated the CRA and FMLA by retaliating against Plaintiffs after Plaintiffs asserted their discrimination and interference claims with the EEOC.
11. On or about December 14, 2012, Plaintiff Sytobia Hood notified her supervisor that she was pregnant. In connection with her pregnancy, her doctor issued the general restrictions given to a woman going through a pregnancy. The restrictions were such that said Plaintiff would require some accommodation with regard to the work to be done by her. During Plaintiff Sytobia Hood's employment with Defendant, she had observed at least three separate non African-American female employees receive accommodations in the form of transfers to different departments or light duty within the same department, in order to be allowed to continue to work during their pregnancies.

Plaintiff Sytobia Hood requested such accommodations but was refused same by Defendant even though specific positions for which she was qualified and which would accommodate her general restrictions, were available, and even though non African-American employees had been allowed to transfer departments or work light duty assignment throughout the facility during their pregnancies. Instead, Defendant forced Plaintiff Sytobia Hood, against her wishes, to immediately stop work and begin FMLA leave. Said Plaintiff contends that such conduct by Defendant constitutes unlawful discrimination on the basis of her race and her pregnancy, and, additionally, that it interfered with her right under the FMLA to determine when she should take FMLA leave.

12. On or about February 26, 2013, Plaintiff Jazzica Hood notified her supervisor that she was pregnant. In connection with her pregnancy, her doctor had also issued general restrictions related to the pregnancy. The restrictions, however, did not in any way prevent Plaintiff Jazzica Hood from performing her duties as an order filler. Nonetheless, Defendant refused to allow Plaintiff Jazzica Hood to continue working and forced her to take FMLA leave. Said Plaintiff did not want to go on FMLA leave at that time because she needed the income generated by her employment and because she was concerned because her 12 weeks of FMLA leave would expire well before the birth of her child which meant that she could lose her job before the baby was born. During her employment with Defendant, Plaintiff Jazzica Hood had also observed at least three separate non African-American female employees receive accommodations in the form of transfers to different departments or light duty within the same department to be allowed to continue to work during their pregnancies. Although Plaintiff Jazzica Hood did not need such an accommodation because she could perform her job with the restrictions, after being told that was being forced to quit working and go on FMLA leave, she asked for the accommodations given to the non African-American pregnant employees but was refused same by Defendant even though positions were available, and

even though non African-American employees had been allowed to transfer departments or work light duty assignment throughout the facility during their pregnancies. Said Plaintiff contends that such conduct by Defendant constitutes unlawful discrimination on the basis of pregnancy and race, and that it also constituted wrongful interference with her right under the FMLA to take leave when she needed it and not before.

13. On May 8, 2013, both Plaintiffs filed charges of discrimination on the basis of race and pregnancy discrimination. On July 7, 2013, Plaintiff Sytobia Hood's baby was born and she returned to work in August 2013. Upon her return to work, said Plaintiff was continually harassed by Defendant. After returning to work, she was continuously followed and watched by a supervisor. She was also forced by the supervisor to do tasks and duties that were not part of her regular job duties. The supervisor did not continuously follow and watch other employees, nor did the supervisor direct other employees to perform tasks outside of their job descriptions. Plaintiff Sytobia Hood complained repeatedly to the DC manager and to the Ops manager about the harassment but nothing was done to stop it. On February 24, 2014, Plaintiff Sytobia Hood again complained to the DC manager about harassment. On that occasion, he told her that she should leave for a while and return later to discuss the situation with him. When she returned, the DC manager, despite having told her to leave for a while, incredibly told said Plaintiff that she should not have left and that she was going to suffer the consequences. Two days later, Plaintiff was fired. Plaintiff Sytobia Hood contends that the harassment and termination was retaliation by Defendant for her having filed a charge of discrimination with the EEOC.

14. After filing the charge of discrimination, Plaintiff Jazzica Hood was fired on August 23, 2013, before her baby had been born, allegedly because she had gone over the time allotted for FMLA leave. Said Plaintiff contends the termination of her employment, in addition to being the

result of Defendant's interference with her FMLA rights by having previously forced her to take unnecessary leave, was also retaliation by Defendant for her having filed a charge of discrimination with the EEOC.

15. The unlawful conduct of Defendant, as described above, has caused and will continue to cause Plaintiffs harm. As a result of Defendant's conduct, Plaintiffs have suffered damages in the form of lost wages and benefits, as well as mental anguish and/or other non-economic damages. Plaintiffs are entitled to recover from Defendant the value of the lost wages and lost benefits incurred as a result of Defendant's conduct, as well as non-economic and liquidated/punitive damages, interest on such amount and such other and further equitable relief that the Court deems appropriate, for which claim is hereby made.

16. Plaintiffs are also entitled to recover from Defendant reasonable attorney's fees and other litigation expenses, for which claim is hereby made.

WHEREFORE, Plaintiffs pray that Defendant be served with and answer the claims asserted herein and that, on final trial, Plaintiffs be awarded judgment against Defendant for actual damages, liquidated/punitive damages, equitable relief, prejudgment and post-judgment interest as allowed by law, attorney's fees, cost of court and such other and further relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

JOHNSTON & MILLER
Attorneys at Law
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By:


J. Craig Johnston
State Bar No. 00787784

ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiff respectfully requests a Jury Trial.

By:


J. Craig Johnston

CIVIL COVER SHEET 5-14CV0127-C

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JAZZICA HOOD and SYTOBIA HOOD

(b) County of Residence of First Listed Plaintiff HALE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

J.Craig Johnston, Johnston & Miller, 2402 52nd Street, Suite 12,
Lubbock, TX 79412 (806) 785-1499

DEFENDANTS

O'REILLY AUTOMOTIVE STORES, INC. D/B/A O'REILLY AUTO PARTS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 370 Other Fraud	LABOR	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	SOCIAL SECURITY	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition	IMMIGRATION	
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Sec. 2000e et seq. and 29 USC Sec. 2601 et seq.Brief description of cause:
Violation of Civil Rights Act and FMLA in employment**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____

UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/18/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

400

APPLYING IFFP

JUDGE

MAG. JUDGE